

**EXHIBIT 2**

**IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT  
GRUNDY COUNTY-MORRIS, ILLINOIS**

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP F/K/A COUNTRYWIDE  
HOME LOANS SERVICING LP,

PLAINTIFF

vs.

EDWIN CARDONA; DAWN M.  
CARDONA; AMBERLEIGH ESTATES  
HOMEOWNERS ASSOCIATION;  
UNKNOWN OWNERS AND NON-  
RECORD CLAIMANTS,

DEFENDANTS

NO. 12 CH 191

Address: 27000 W. Cypress Road  
Channahon, Illinois 60410

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES, Plaintiff, BANK OF AMERICA, N.A., SUCCESSORY BY  
MERGER TO BAC HOMELOANS SERVICING, LP F/K/A COUNTRYWIDE HOME  
LOANS SERVICING LP, by and through its attorneys, JOHNSON, BLUMBERG &  
ASSOCIATES, and in support of Plaintiff's Response to Defendants' Motion to Dismiss,  
states as follows:

1. Plaintiff filed its Complaint to Foreclose on July 6, 2012, in order to foreclose on the subject mortgage, executed by Defendants, Edwin and Dawn M. Cardona, on April 24, 2009 and attached to the subject property by a note promising to pay the principal sum of \$249, 314.00 also executed on April 24, 2009.
2. Defendants, Edwin and Dawn M. Cardona, were personally served, with a copy of Plaintiff's Complaint to Foreclose and Summons at the subject property address on July 13, 2012.
3. Defendants, Edwin and Dawn M. Cardona, filed their pro se Motion to Dismiss on August 7, 2012.

4. "Illinois is a fact-pleading jurisdiction. In order to set forth a good and sufficient claim or defense, a pleading must allege ultimate facts sufficient to satisfy each element of the cause of action..." *Richco Plastic Co. v. IMS Co.*, 288 Ill.App.3d 782 (1<sup>st</sup> Dist. 1997).
5. Under Illinois law, the mortgagee need not prove non-payment by the mortgagor in order to establish a prima facie case for foreclosure. *Pan-American Life Ins. Co. v. Invex Holdings*, N.V. 96 C 4565, 1997 WL 72078 (N.D. Ill. Feb. 14, 1997), citing *Farm Credit Bank of St. Louis v. Biethman*, 262 Ill. App. 3d 614, 199 Ill.Dec. 958, 634 N.E.2d 1312, 1318 (5th Dist. 1994). Instead, the burden is on the defendant to prove payment *Id.*
6. Defendants allege in the Motion to Dismiss that two payments were tendered to the Plaintiff on May 16 and May 17, 2012 in the amounts of \$274,812.87 and \$2,572.12. However, Plaintiff reversed these payments on the subject loan because the Standard Bank account Defendants' checks were from was closed prior to the attempted payments (see attached cancelled checks as Exhibit A and payment history attached as Exhibit B).
7. Defendants allege that the subject loan was paid in full. However, Defendants tendered fraudulent checks to the Plaintiff, by knowingly drawing checks on an account they knew or should have known was closed. Moreover, Defendants have failed to provide evidence showing that the payments tendered were accepted by Plaintiff and debited from the account they held with Standard Bank.

8. Defendants have failed to tender the required monthly installments of principal, interest, taxes, and/or insurance, pursuant to the terms of the subject note and mortgage, for August 2010 through the present (see Exhibit B).
9. Defendants have failed to present the necessary facts sufficient to set forth a defense in the instant foreclosure action.
10. Moreover, Defendants have failed to provide a well-pled motion with plainly set forth facts to support their allegations and thus failed to comply with Illinois law. Defendants' motion is without merit and, based on the facts presented, the Motion to Dismiss must be denied.

WHEREFORE, Plaintiff, BANK OF AMERICA, N.A., SUCCESSORY BY MERGER TO BAC HOMELOANS SERVICING, LP F/K/A COUNTRYWIDE HOME LOANS SERVICING LP, respectfully requests this court to deny Defendants' Motion to Dismiss.

Respectfully Submitted,

  
\_\_\_\_\_  
Karla M. Stepter  
One of Plaintiff's Attorneys

**JOHNSON, BLUMBERG & ASSOCIATES, LLC**  
Attorneys for Plaintiff  
**230 W. Monroe Street, Suite 1125**  
**Chicago, IL 60606**  
**(312) 541-9710**



Account Number:  
Statement Period:  
Date Prepared:

[REDACTED]  
04/2009 - 06/2012  
06/22/2012

Property Address:  
27000 W CYPRESS ROAD  
CHANNAHON, IL 60410

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Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
<b>Beginning Balance</b>										
08/26/2009	INT ESCROW SETUP	5,023.04	07/2009	248,625.80	.00	5,023.04	.00	.00	.00	.00
08/31/2009	REGULAR PAYMENT	2,011.48	08/2009	345.93	880.55	5,023.04	.00	.00	.00	.00
09/01/2009	COUNTY TAX PMT	-3,802.36	08/2009	248,279.87	.00	2,005.68	.00	.00	.00	.00
09/01/2009	COUNTY TAX PMT	-3,802.36	08/2009	248,279.87	.00	2,005.68	.00	.00	.00	.00
09/04/2009	FHA MIP PMT	-203.12	08/2009	248,279.87	.00	-1,796.68	.00	.00	.00	.00
09/16/2009	REGULAR PAYMENT	2,011.48	09/2009	347.16	879.32	785.00	.00	.00	.00	.00
10/06/2009	FHA MIP PMT	-105.62	09/2009	247,932.71	.00	-1,214.80	.00	.00	.00	.00
10/14/2009	REGULAR PAYMENT	2,011.48	10/2009	348.38	878.10	785.00	.00	.00	.00	.00
11/05/2009	FHA MIP PMT	-101.56	10/2009	247,584.33	.00	-1,320.42	.00	.00	.00	.00
11/13/2009	REGULAR PAYMENT	2,011.48	11/2009	349.62	876.86	785.00	.00	.00	.00	.00
12/02/2009	HAZARD INS PMT	-578.39	11/2009	247,234.71	.00	-636.98	.00	.00	.00	.00
12/04/2009	FHA MIP PMT	-101.56	11/2009	247,234.71	.00	-101.56	.00	.00	.00	.00
12/15/2009	REGULAR PAYMENT	1,923.87	12/2009	350.86	875.62	697.39	.00	.00	.00	.00
12/15/2009	MISC. POSTING	.13	12/2009	246,883.85	.00	165.46	.00	.00	.00	.00
01/07/2010	FHA MIP PMT	-101.56	12/2009	246,883.72	.00	-101.56	.00	.00	.00	.00

EXHIBIT A

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Bank of America

Home Loans

Account Number: [REDACTED]  
 Statement Period: 04/2009 - 06/2012  
 Date Prepared: 06/22/2012

Property Address:  
 27000 W CYPRESS ROAD  
 CHANNAHON, IL 60410

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
01/14/2010	REGULAR PAYMENT	1,923.87	01/2010	352.10	874.88	697.39	.00	.00	.00	.00
02/03/2010	REGULAR PAYMENT	1,923.87	02/2010	353.35	873.13	697.39	.00	.00	.00	.00
02/04/2010	FHA MIP PMT	-101.56	02/2010	246,178.27	.00	1,458.68	.00	.00	.00	.00
03/04/2010	FHA MIP PMT	-101.56	02/2010	246,178.27	.00	1,357.12	.00	.00	.00	.00
03/16/2010	REGULAR PAYMENT	1,923.87	03/2010	354.60	871.88	697.39	.00	.00	.00	.00
04/06/2010	FHA MIP PMT	-101.56	03/2010	245,823.67	.00	1,952.95	.00	.00	.00	.00
04/14/2010	REGULAR PAYMENT	1,923.87	04/2010	355.85	870.63	697.39	.00	.00	.00	.00
05/06/2010	FHA MIP PMT	-101.56	04/2010	245,467.82	.00	2,548.78	.00	.00	.00	.00
05/13/2010	REGULAR PAYMENT	1,923.87	05/2010	357.11	869.37	697.39	.00	.00	.00	.00
05/04/2010	FHA MIP PMT	-99.80	05/2010	245,110.71	.00	1,144.61	.00	.00	.00	.00
06/16/2010	REGULAR PAYMENT	1,923.87	06/2010	358.38	868.10	697.39	.00	.00	.00	.00
06/21/2010	COUNTY TAX PMT	-2,850.45	06/2010	244,752.33	.00	2,850.45	.00	.00	.00	.00
07/07/2010	FHA MIP PMT	-99.80	06/2010	244,752.33	.00	99.80	.00	.00	.00	.00
07/08/2010	REGULAR PAYMENT	1,923.87	07/2010	359.65	866.83	697.39	.00	.00	.00	.00
				244,382.68		1,489.34				

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Account Number:  
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Date Prepared:

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04/2009 - 06/2012  
06/22/2012

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CHANNAHON, IL 60410

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied Total
08/05/2010	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80	.00	.00	.00	.00
08/24/2010	COUNTY TAX PMT	-2,850.45	07/2010	244,392.68	.00	-2,850.45 -1,460.91	.00	.00	.00	.00
09/07/2010	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -1,560.71	.00	.00	.00	.00
10/06/2010	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -1,660.51	.00	.00	.00	.00
10/20/2010	HAZARD INS PMT	-743.46	07/2010	244,392.68	.00	-743.46 -2,403.97	.00	.00	.00	.00
11/04/2010	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -2,533.77	.00	.00	.00	.00
12/06/2010	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -2,603.57	.00	.00	.00	.00
01/06/2011	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -2,703.37	.00	.00	.00	.00
02/04/2011	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -2,803.17	.00	.00	.00	.00
03/04/2011	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -2,902.97	.00	.00	.00	.00
04/06/2011	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -3,002.77	.00	.00	.00	.00
05/05/2011	FHA MIP PMT	-99.80	07/2010	244,392.68	.00	-99.80 -3,102.57	.00	.00	.00	.00
06/06/2011	FHA MIP PMT	-97.97	07/2010	244,392.68	.00	-97.97 -3,200.54	.00	.00	.00	.00
06/09/2011	COUNTY TAX PMT	-2,660.38	07/2010	244,392.68	.00	-2,660.38 -5,860.92	.00	.00	.00	.00

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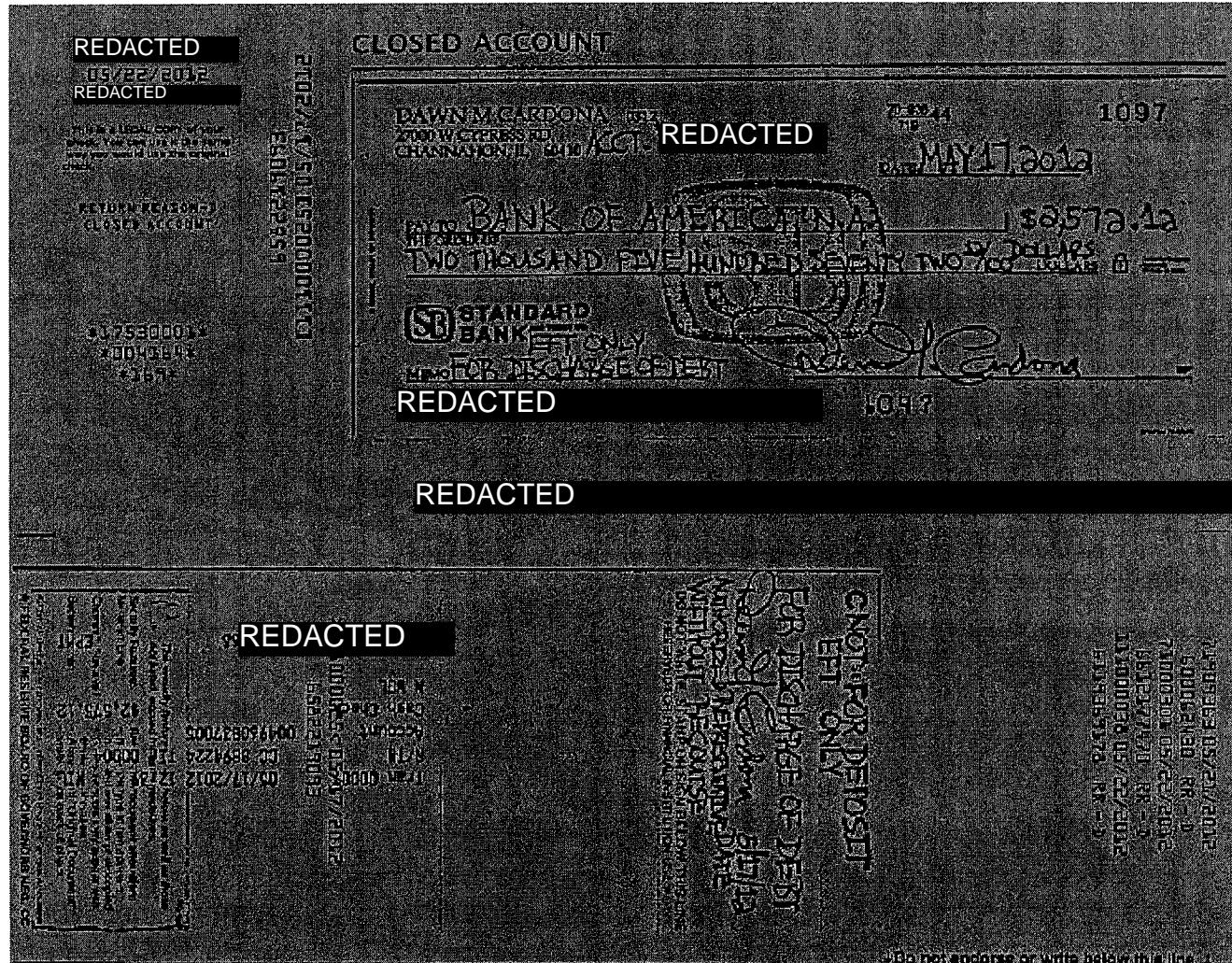
Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
07/07/2011	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
08/04/2011	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
08/12/2011	COUNTY TAX PMT	-2,660.38	07/2010	244,392.68	.00	-2,660.38	.00	.00	.00	.00
09/07/2011	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
10/06/2011	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
10/18/2011	HAZARD INS PMT	-888.73	07/2010	244,392.68	.00	-888.73	.00	.00	.00	.00
11/04/2011	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
12/06/2011	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.997.85	.00	.00	.00	.00
01/06/2012	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
02/06/2012	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
03/06/2012	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
04/05/2012	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
05/04/2012	FHA MIP PMT	-.97.97	07/2010	244,392.68	.00	-.97.97	.00	.00	.00	.00
05/15/2012	COUNTY TAX PMT	-2,513.95	07/2010	244,392.68	.00	-2,513.95	.00	.00	.00	.00

REDACTED  
 Account Number:  
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Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied Total
05/17/2012	MISC. POSTING	274,812.87	07/2010	244,392.68	.00	-13,001.65	.00	.00	.00	274,812.87
05/17/2012	REGULAR PAYMENT	2,572.12	08/2010	244,031.76	865.56	697.39 -12,304.26	.00	.00	.00	571.30
05/18/2012	MISC. POSTING	.00	08/2010	244,031.76	.00	275,384.17	.00	.00	.00	275,384.17
05/23/2012	MISC. POSTING	-309.31	08/2010	244,031.76	.00	-309.31	.00	.00	.00	.00
05/24/2012	MISC. POSTING	309.31	08/2010	244,031.76	.00	262,770.60	.00	.00	.00	.00
05/24/2012	MISC. POSTING	.00	08/2010	244,031.76	.00	263,079.91	.00	.00	.00	.00
05/24/2012	PAYMENT REVERSAL	-2,572.12	07/2010	-360.92	-865.56	-275,384.17 -12,304.26	.00	.00	.00	275,384.17
05/24/2012	MISC. POSTING	-274,812.87	07/2010	244,392.68	-865.56	-697.39 -13,001.65	.00	.00	.00	571.30
06/04/2012	MISC. POSTING	2,262.81	07/2010	244,392.68	.00	-13,001.65	.00	.00	.00	2,262.81
06/04/2012	MISC. POSTING	-2,262.81	07/2010	244,392.68	.00	-13,001.65	.00	.00	.00	2,262.81
06/06/2012	FHA MIP PMT	-96.05	07/2010	244,392.68	.00	-96.05	.00	.00	.00	.00
						-13,097.70				



## **EXHIBIT**

B

Hello,

The 2 payments posted but were reversed are below. They both were returned unpaid due to closed account.  
Thanks.